IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1198 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMESHCHANDRA HARILAL ANTANI SINCE DECEASED THROUGH HEIRS

Versus

GUJARAT STATE ROAD TRANSPORT CORPORATION

Appearance:

1. Special Civil Application No. 1198 of 1984

MR YS MANKAD for Petitioner No. 1-1/3

MR MD PANDYA for Respondent No. 1

MR YOGESH S LAKHANI for Respondent No. 1

MR MUKESH H RATHOD for Respondent No. 2-25,27-30,32-49

RULE SERVED for Respondent No. 26,31

CORAM : MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 02/09/2002

ORAL JUDGEMENT

1. In this petition, the petitioner as well as respondent nos. 2 to 49 make the same grievance that despite the fact that they belong to category of Class-II officers they are required to work for eight hours in a day and they do not have the benefit of public holidays and also the holidays on 2nd and 4th Saturdays. As against that their counter parts working in the administrative side are required to work for six and half hours in a day and they enjoy all the public holidays as well as holidays on 2nd and 4th Saturdays.

1.1. The petitioner and respondent nos. 2 to 49 are all employees of respondent no.1 i.e. the Gujarat State Road Transport Corporation. They are discharging duties in Central workshop on the mechanical engineering side. There are officers belonging to Class-II, who are working on the administrative side of respondent no.1. However, there is great disparity between the conditions of service between the officers of the same class. The petitioner and the aforesaid respondents though belong to the category of Class-II officers while working in the workshop they are required to put in work for one and half hours more than their counter parts working in the administrative office of respondent no.1. Not only that but they are required to work even on public holidays as well as on 2nd and 4th Saturdays. As against that their counter parts in the administration enjoy all the aforesaid holidays. Further grievance of the petitioner and the said respondents is that despite this disparity they are not getting extra benefit to adequately compensate them for extra amount of work put in by them. Their say is that if according to respondent no.1, considering the nature of work, they are required to work even on public holidays and Saturdays, they should be given 16% of the salary by way of extra remuneration per month. The petitioner has therefore prayed that this disparity either should be removed or the petitioner and other similarly situated officers i.e. respondents nos.2 to 49 be adequately compensated for the extra work rendered by them on each working day as well as on public holidays and also on 2nd and 4th Saturdays.

1.2. It is the say of the petitioner that despite repeated request and representations having been made to the concerned authorities through proper channels to consider their request favourably the same has not been granted. It is the say of the petitioner that even the State Government had issued Resolution dated 7th September, 1981 based on the judgment of this Court dated 28th July, 1981 delivered in Special Civil Application 268/1977 whereby all the officers of Government working

in the workshop were given special pay with effect from 1st April, 1977 and they were also given right to enjoy 2nd and 4th Saturdays and also all the public holidays in rotation. According to the petitioner, his case and that of respondents nos. 2 to 49 stand on the same footing and, therefore, they should also be allowed to get the benefit as prescribed in the aforesaid Resolution by the Government of Gujarat by respondent no.1. This Resolution was also sought to be submitted to the appropriate authority by entrusting it to the workman's Manager, Central workshop being the proper channel by the petitioner and others but curiously enough without any authority the said request alongwith the circular was turned down by the workman's Manger and he did not think it fit to forward the same to the Vice Chairman and the General Manager. The petitioner's say is that on certain occasion circulars envisaging certain arrangements were issued on the experimental basis but the same did not work out properly and were not to the satisfaction of the legitimate demands of the petitioners and other officers. Ultimately, when it was realised by the petitioner and others that no fruitful purpose would be served by waiting in hope they have approached this Court.

1.3. Initially, the petitioner had stated that the present petition was filed on his behalf as well as on behalf of other officers. However, names of such officers were not disclosed in the petition. Ultimately, they were joined as respondents in this petition. Respondents nos. 2 to 32 were joined in the present petition as respondents vide this Court's order dated 7th March, 1991 passed in Misc. Civil Application no.456/1991. So far respondent nos. 33 to 49 are concerned they have been joined in view of the Court's order dated 1st September, 1995 passed in Civil Application no.1468/1995.

1.4. During the pendency of this petition, original petitioner Mr.R.H. Antani has expired and his heirs have been brought on the record by order dated 2nd August, 2000 passed in Civil Appln. no.9129/1999.

1.5. In response to this, respondent no.1 has filed affidavit-in-reply and its say is that this practice is going on right from the inception of respondent no.1 and when the petitioner and other supporting respondents joined the service of respondent no.1 they knew about the conditions of service and with full knowledge they have joined the service of respondent no.1. In view of that they cannot now be allowed to agitate such dispute. Their case is that the demand of the petitioner and the

like officers was considered several times and whatever the benefit that could be extended to them have already been given. However, considering the nature of the work they are required to carry out, the enjoyment of public holidays as well as holidays on 2nd and 4th Saturdays is not possible to be given. Moreover, since the Corporation is having a large fleet for vehicles necessary repairs, maintenance of such vehicles is required to be done regularly for which these officers are required to work for 8 hours a day and no curtailment in the working hours is found possible. It is the say of respondent no.1 that these officers are granted half of the holidays on 2nd and 4th Saturdays and public holidays whereas Class-II officers in any other department and Stores Department in Central office observe six and half hours as daily work hours and 2nd and 4th Saturdays and public holidays are granted to them. It is further their say that even the officers working on administration side enjoy this benefit. So far the officers working in Central workshop and Divisional Stores are concerned they can be transferred to work as such in Divisional department and stores department in Central office where they enjoy public holidays and 2nd and 4th Saturdays and also work for six and half hours. Thus in view of inter departmental transfer the petitioner and the supporting respondents can also enjoy the benefit of public holidays and 2nd and 4th Saturdays and they are required to put in six and half hours of work. This benefit they are getting in rotation. In view of that their grievance is not justified. It is the say of respondent no.1 that this problem was time and again considered by respondent no.1 by forming different high level committees. However, no suitable alternative could be found out for the present system. The say of the respondent is that since the petitioner and the supporting respondents knew about the situation prevailing in respondent no.1 they cannot now be permitted to agitate this issue before this Court and petition deserves to be dismissed.

2. Mr.Y.S. Mankad learned counsel for the petitioner has canvassed all the aforesaid contentions of the petitioner and has prayed that looking to the disparity of service conditions exist between the officers of the said class of respondent no.1, the petitioner should be either allowed to enjoy the benefit of public holidays and 2nd and 4th Saturdays and work for six and half hours a day or else he be compensated by paying extra 16% of his salary per month by way of additional remuneration. Mr.Prabhakar Upadhyay learned counsel appearing for supporting respondents has adopted the submission of Mr.Mankad. He has further drawn my

attention to para 7 of the affidavit-in-rejoinder filed by the supporting respondents wherein in has been stated that in the central workshop of respondent no.1 there are two posts below the rank of junior officers. One is of store supervisor and the other is of junior foreman. Store supervisor category were required to work on similar line. However, they raised dispute which was ultimately referred to the Industrial Tribunal being Reference no.66/75 which was decided on 30th October, 1976 wherein special pay came to be granted by the said award passed by the said Tribunal. This award was challenged before this Court as well as before the Apex Court but the Corporation did not succeed and ultimately, by virtue of the said award they are now required to work for six and half hours in a day and they are also enjoying all the public holidays and 2nd and 4th Saturdays.

3. As against that Mr.Devnani learned counsel for the respondents submitted that considering the fact that when the petitioner and other respondents joined the service they knew about the service conditions made for Class-II officers working in the workshop, they now cannot be allowed to say that they are discriminated and they should also be permitted to get public holidays and holidays on 2nd and 4th Saturdays. He has further submitted that considering the nature of work they are required to carry out, such facility cannot be made available to them. His submission is that because of the additional work they are also being paid special scale on salary which takes care of all grievance made by the petitioner and the other officers. Lastly he has submitted that this petition does not have any merit.

4. Before I commence the appreciation of rival submissions it may be noted here that vide order dated 2nd September, 1997 in view of the learned counsel appearing for the respondent no.1, making a statement that the issue was being resolved by way of settlement, this petition was disposed of. However, since no settlement could be arrived at, the petitioner as well as supporting respondents were granted liberty to revive this petition. Now it has been placed before me for giving decision on merits.

5. I have carefully perused the record of this petition and from the said record it appears that the present petitioner and respondent nos.2 to 49 belong to the category of Class-II officers employed in the service of respondent no.1 and they are posted in the mechanical and engineering section of Central as well as Divisional

Workshops of the said respondent. It is an admitted fact that while working as Class-II officers in the workshop they are required to work for eight hours a day and they also do not enjoy the benefit of public holidays as well as 2nd and 4th Saturdays. As against that their counter parts working in the office i.e. on administrative side not only enjoy all the public holidays as well as 2nd and 4th Saturdays but they also work for six and half hours a day i.e. one and half hour less than the working hours of the petitioner and respondents nos.2 to 49. It is true that this practice is going on since long and when the petitioner and the supporting respondents joined the service they were very much aware of these conditions and inspite of that they have joined the service of respondent no.1. The say of respondent no.1 is that in such circumstances i.e. when they joined the service with full knowledge they should not be allowed to agitate this question. I do not find any merit in the submission made by respondent no.1. Firstly because that merely at the time of joining the service such practice was being followed by respondent no.1 it cannot preclude the petitioner and other respondents from agitating issue on the ground that they are being discriminated and as a result of that gross injustice is being caused to them. When a person feels aggrieved by the action of the authority which he finds to be arbitrary or discriminatory he can certainly raise dispute with regard to it. The petitioner and other supporting respondents are therefore completely justified in agitating this issue before this Court. It may also be noted that this is not for the first time such grievance is made either by the petitioner or employees who are similarly situated or who are in similar way meted out with discriminatory treatment. Even the record of this petition shows that this question was a burning problem for respondent no.1. Time and again committees were appointed by respondent no.1 to find out suitable solution but even according to respondent no.1 no viable formula could be evolved. This practice is continued even today. However, the fact remains that this is not the first incident that the petitioner and supporting respondents have approached this Court with such grievance and as could be seen from the foregoing paragraphs of this judgment it was adequately remedied.

6. So far as grievance made by the petitioner is concerned that they are required to work for eight hours a day and they do not enjoy any benefit of all public holidays as well as holidays on 2nd and 4th Saturdays, it is an admitted fact. It is also an admitted fact that their counter parts working in the administration office

of respondent no.1 enjoy all these benefits and not only that their working hours are also less by one and half hours. However, respondent no.1 is not able to point out whether the petitioner and the supporting respondents derive some additional monetary benefit by way of additional remuneration to compensate them for the deprivation of these aforesaid benefits. Assuming that the say of respondent no.1 to the effect that the nature of work carried out by the petitioner and other officers is totally different and they cannot be equated with their counter parts working on the administration side is true, even then the fact remains that these officers are required to put in more labour then their counter parts. If that be so naturally they would expect to be paid more to them in terms of money. There is no clear picture on record to show that they are placed in higher grade of pay-scales than the officers of Class-II were working in the administrative office of respondent no.1. It is true that in para 11.1. of affidavit-in-reply mention is made about payment of special pay of Rs.80/- to Deputy Engineers and Rs.50/- to Junior Engineers . However it does not give any indication as to whether any higher pay-scale is specially prescribed for them. Even considering the nature of work they are rendering for extra hours and days, payment of aforesaid amount can hardly be said to be adequate compensation. Moreover, in para 13.1 of affidavit-in-reply mention about pay-scales of Class-I and Class-II Officers of respondent no.1 is made. However, this also does not give any indication whether any special higher pay-scale is prescribed for the officers of Class-II working in Mechanical & Engineering section of the workshop. It is therefore, clear that if the institution requires these officers to work even on holidays the demand of service jurisprudence is that they should be adequately compensated for the same. In that view of the matter, the petitioner's grievance is found to be proper and just. This Court therefore should remedy it.

7. Mr.Y.S. Mankad learned counsel appearing for the petitioner placed reliance on order passed by the learned Single Judge (Coram : R. Balia, J.) of this Court dated 17th March, 1997 delivered in Special Civil Application no.4125/1994 where in similar circumstances, Class-IV employees of that petition who did not receive benefit of public holidays even Sundays the Government was directed to pay to them additional pay for the additional duty performed by them on public holidays, closed Saturdays and Sundays. That direction was given in light of the Resolution of the State Government dated 18th May, 1985. Considering the decision of this Court, it clearly

appears that the petitioner and the supporting respondents who are also put in similar situation are entitle to receive this benefit. From the affidavit-in-reply filed by respondent no.1 it appears that reduction in the working hours or not working on public holidays and Saturdays and Sundays is not possible. In that view of the matter the alternative which is available to this Court is to direct respondent to give extra remuneration at the rate of 16% of salary every month to the petitioner and other supporting respondents.

8. In view of the aforesaid discussion, this petition is required to be allowed. Respondent no.1 is directed to pay to the petitioner additional remuneration at the rate of 16% of the salary drawn by him with effect from June, 1976 till June, 1984 i.e. the time when petitioner retired. Since the petitioner has expired respondent no.1 is directed to work out this amount and pay the sum to the heirs of the deceased petitioner who have been already brought on the record of this petition as early as possible but not later than 30th November, 2002. It is also clarified that in view of the fact that officers working in the workshop can be transferred to the administrative office where he can enjoy all the public holidays and holidays on 2nd and 4th Saturdays and the working hours are six and half, if the petitioner has worked in such office that period should be excluded.

9. As stated above respondents nos.2 to 49 have been impleaded in this petition as respondents upon their filing the aforesaid Civil Application, pursuant to the public notice dated 9th May, 1984 published in local gujarati daily "Sandesh" under the provisions of Order 1 Rule 8 of the C.P.C. The Apex Court in the Case of Chairman, Tamil Nadu Housing Board v. T.N. Ganpathy reported in A.I.R. 1990 S.C 642 has observed :-

> "The provisions of Order 1, Rule 8 have been included in the Public notice so as to avoid multiplicity of litigation. The condition necessary for the application of provisions is that the persons on whose behalf the suit is being brought must have the same interest. In other words either the interest must be common or they must have a common grievance which they seek to get redressed. The object for which Order 1 Rule 8 is enacted is really to facilitate the decision of questions, in which a large number of persons are interested, without recourse to the ordinary procedure."

9.1. As can be seen from the facts of this case that the interest of the petitioner and respondents nos. 2 to 49 is common. Hence whatever the benefit the petitioner is entitled to receive should also be available to these respondents. Further, in view of the aforesaid observations of the Supreme Court instead of driving the said respondents to file separate petition for earning this benefit which will certainly result into multiplicity of litigation and also it will cause enormous delay before they actually receive the said benefit, it is most desirable that in this very petition respondent no.1 be directed to pay to the said respondents an additional remuneration at the rate of 16% of salary drawn by them. The said respondents should be given this benefit either from June, 1976 or from the date of joining the service whichever is later, till the age of reaching the age of superannuation, except for the period for which they have worked in the office on administrative side.

Rule is made absolute to the aforesaid extent with no order as to costs.

[AKSHAY H. MEHTA, J.]

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